

SENATE BILL No. 423

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-11.6.

Synopsis: Substitute natural gas contracts. Requires the Indiana finance authority (authority) to enter into contracts for the purchase and sale of substitute natural gas (SNG) from coal gasification facilities to regulated energy utilities for delivery to retail end use customers. Establishes the substitute natural gas account to provide funding to the authority for SNG related business. Makes an appropriation.

Effective: July 1, 2009.

Hershman, Merritt

January 12, 2009, read first time and referred to Committee on Utilities & Technology.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 423

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-11.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 11.6. Additional Authority; Substitute Natural Gas**
5 **Fund**

6 **Sec. 1. As used in this chapter, "account" refers to the substitute**
7 **natural gas account established by section 27 of this chapter.**

8 **Sec. 2. As used in this chapter, "authority" refers to the Indiana**
9 **finance authority.**

10 **Sec. 3. As used in this chapter, "coal gasification facility" means**
11 **a facility in Indiana that:**

12 (1) uses a manufacturing process that converts coal into
13 substitute natural gas; and

14 (2) not later than June 30, 2009, has applied for a federal loan
15 guarantee for the financing of the facility.

16 **Sec. 4. As used in this chapter, "commission" refers to the**
17 **Indiana utility regulatory commission created by IC 8-1-1-2.**

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1 **Sec. 5. As used in this chapter, "energy utility" has the meaning**
 2 **set forth in IC 8-1-2.5-2.**

3 **Sec. 6. As used in this chapter, "management contract" means**
 4 **a contract that:**

5 (1) is entered into by the authority and a regulated energy
 6 utility; and

7 (2) provides for:

8 (A) the delivery, billing, collection, and remittance of
 9 monies received for SNG delivered in the service area of
 10 the regulated energy utility; and

11 (B) reasonable compensation for services provided by the
 12 regulated energy utility under the terms of the contract.

13 **Sec. 7. As used in this chapter, "purchase contract" means a**
 14 **contract that:**

15 (1) is entered into by the authority and a producer of SNG for
 16 the sale and purchase of SNG;

17 (2) has a thirty (30) year term;

18 (3) provides a guarantee of savings for retail end use
 19 customers; and

20 (4) contains other terms and conditions determined necessary
 21 by the authority.

22 **Sec. 8. As used in this chapter, "regulated energy utility" means**
 23 **an energy utility that is subject to IC 8-1-2-42.**

24 **Sec. 9. As used in this chapter, "related contract" means a**
 25 **contract for services that the authority determines are necessary**
 26 **and appropriate for the delivery of SNG to the city gate point of a**
 27 **regulated energy utility.**

28 **Sec. 10. As used in this chapter, "retail end use customer"**
 29 **means a customer who acquires energy at retail for the customer's**
 30 **own consumption from a gas utility that must apply to the**
 31 **commission under IC 8-1-2-42 for approval of gas cost changes.**

32 **Sec. 11. As used in this chapter, "substitute natural gas" or**
 33 **"SNG" means pipeline quality gas produced by a facility that uses**
 34 **a gasification process to convert coal into a gas capable of being**
 35 **used by a utility to supply gas utility service to retail end use**
 36 **customers in Indiana.**

37 **Sec. 12. The general assembly makes the following findings:**

38 (1) The furnishing of reliable supplies of reasonably priced
 39 natural gas for sales to retail customers is essential for the
 40 well being of the people of Indiana. Natural gas prices are
 41 volatile, natural gas supplies are unreliable, and energy
 42 utilities have been unable to mitigate the effects of the

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volatility and unreliability.

(2) Long term contracts for the purchase of SNG between the authority and SNG producers will enhance the receipt of federal incentives for the development, construction, and financing of new coal gasification facilities in Indiana.

(3) The authority's participation in and oversight of the purchase, sale, and delivery of SNG to retail end use customers is critical to obtain low cost financing for the construction of new coal gasification facilities.

(4) Obtaining low cost financing for the construction of new coal gasification facilities is necessary to allow retail end use customers to enjoy the benefits of a reliable, reasonably priced, and long term energy supply.

Sec. 13. The authority shall do the following:

(1) Enter into contracts for the purchase, transportation, and delivery of SNG.

(2) Establish and collect rates and charges for SNG.

(3) Enter into contracts for private professional and technical assistance concerning SNG contracts.

Sec. 14. (a) The authority, either directly or as an assignee of an energy utility, shall enter into purchase contracts for the purchase of SNG from coal gasification facilities in an annual amount of at least thirty-four billion cubic feet (34 Bcf).

(b) The authority shall submit a final purchase contract to the commission for approval.

(c) The commission may reduce the volume of SNG purchased by the authority under a purchase contract by the volume of SNG that an energy utility (other than a regulated energy utility) has contracted to purchase directly from the coal gasification facility.

Sec. 15. The authority shall enter into management and related contracts as needed to transport, store, deliver, manage, and bill and collect for the delivery and sale of SNG to retail end use customers.

Sec. 16. Notwithstanding any other law, including public purchasing and competitive bidding requirements, the authority shall procure purchase and related contracts using the processes and procedures it considers appropriate to obtain a reliable, long term supply of SNG.

Sec. 17. Before negotiating the terms of, entering into, or accepting assignment of a contract under this chapter, the authority shall consult with the consumer counselor of the office of utility consumer counselor appointed under IC 8-1-1.1-3.

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1 **Sec. 18. (a) The authority shall take title to SNG under the terms**
 2 **of the purchase contract to which the authority is a party. The**
 3 **authority holds title to the SNG until the SNG is sold and delivered**
 4 **to retail end use customers.**

5 **(b) The commission shall allocate on an annual basis SNG**
 6 **purchased by the authority to the retail end use customers of a**
 7 **regulated energy utility based on the proportion of the amount of**
 8 **gas delivered by the regulated energy utility to the total amount of**
 9 **gas delivered by all regulated energy utilities in the immediately**
 10 **preceding calendar year.**

11 **(c) SNG is considered sold when the SNG is delivered to retail**
 12 **end use customers.**

13 **(d) The authority has the right to sell SNG to third parties**
 14 **instead of retail end use customers if the authority determines that**
 15 **sales to third parties are necessary and appropriate to manage the**
 16 **delivery of SNG to retail end use customers. However, the**
 17 **authority may not sell SNG to a third party at a price greater than**
 18 **the actual cost to the authority of acquiring, transporting, storing,**
 19 **and managing the SNG that is the subject of the sale.**

20 **Sec. 19. (a) The authority may include in a contract entered into**
 21 **under this chapter a provision allowing the timely recovery of the**
 22 **following costs incurred by the authority:**

23 **(1) Costs of purchasing SNG.**

24 **(2) Costs of transporting SNG.**

25 **(3) Costs of delivering SNG.**

26 **(4) Costs incurred by the authority in administering this**
 27 **chapter.**

28 **(5) Costs associated with supplying working capital,**
 29 **maintaining financial reserves, and allowing for defaults by**
 30 **retail end use customers.**

31 **(b) A provision under subsection (a) is subject to the approval**
 32 **of the commission. In determining whether, or to what extent, to**
 33 **approve the provision, the commission shall consider:**

34 **(1) whether the costs incurred by the authority are reasonable**
 35 **and necessary; and**

36 **(2) the mechanism by which the authority seeks to recover the**
 37 **costs.**

38 **(c) The commission shall adopt rules under IC 4-22-2 to carry**
 39 **out the requirements of this section. A rule adopted under this**
 40 **subsection must require that a bill provided by a regulated energy**
 41 **utility to a retail end use customer include a line item for costs**
 42 **associated with the purchase and delivery of SNG.**

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Sec. 20. (a) A payment for SNG:

(1) to which the authority holds title; and

(2) that is delivered by a regulated energy utility to its retail end use customers;

is a direct obligation of the retail end use customers to the authority. The regulated energy utility shall collect the payments from the retail end use customers as an agent of the authority.

(b) Payments made under subsection (a):

(1) are the property of the authority;

(2) shall be segregated and held in trust for the authority by the regulated energy utility that collects the payments; and

(3) shall be credited to the SNG account.

Sec. 21. The obligation of the authority to pay for SNG, or for any services under a contract entered into under this chapter, is limited to the funds available in the account plus any other amount recoverable by the authority through a provision included in a contract under section 19 of this chapter. An obligation under this section is not supported by the full faith and credit of the state.

Sec. 22. (a) Upon the request of the authority, the commission shall order a regulated energy utility to enter into a management contract with the authority to:

(1) distribute and deliver SNG purchased by the authority; and

(2) provide billing, collection, and other services related to the purchase, distribution, and delivery of the SNG.

(b) A management contract entered into under subsection (a) must include a mechanism by which the regulated energy utility is reimbursed for all costs incurred in performing the management contract in excess of costs that, as determined by the commission, the regulated energy utility would otherwise have incurred in the ordinary course of business.

Sec. 23. Notwithstanding any other law, the authority is not:

(1) considered an energy utility solely by virtue of its participation in any transaction described in this chapter;

(2) subject to the jurisdiction of the commission except as provided in this chapter; or

(3) required to obtain the approval of the commission except as provided in this chapter.

Sec. 24. If the authority enters into a contract under this chapter, the state covenants and agrees, for the benefit of the parties to the contract, as well as any entity that provides financing to a party to the contract, that the state will not take or permit any

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1 action that would:

2 (1) impair the contract; or

3 (2) otherwise limit, alter, or impair the SNG property interest
4 that is the subject of the contract;

5 until the contract has been performed in full.

6 Sec. 25. This chapter does not authorize the authority to take
7 ownership of the transportation, transmission, generation,
8 production, or distribution assets of an energy utility.

9 Sec. 26. This chapter may not be construed to reduce or modify
10 an energy utility's obligation to provide energy service.

11 Sec. 27. (a) The substitute natural gas account is established as
12 an account within the state general fund to provide funding to the
13 authority to satisfy its obligations under this chapter. The
14 authority shall administer the account.

15 (b) The account consists of payments credited to the account
16 under section 20(b)(3) of this chapter.

17 (c) Money in the account is continuously appropriated for the
18 purposes of the account.

19 (d) The expenses of administering the account shall be paid from
20 money in the account.

21 (e) The treasurer of state shall invest money in the account not
22 currently needed to meet the obligations of the account in the same
23 manner as other public money may be invested. Interest that
24 accrues from these investments shall be deposited in the account.

25 (f) Money in the account at the end of a state fiscal year does not
26 revert to the state general fund.

27 Sec. 28. In addition to the rules adopted under section 19(c) of
28 this chapter, the authority may adopt rules under IC 4-22-2 to
29 implement this chapter, including a rule to protect confidential or
30 proprietary financial or trade secret information included in
31 reports provided to the authority by SNG producers, energy
32 utilities, or regulated energy utilities.

33 Sec. 29. The terms of a customer choice program (as defined in
34 IC 8-1-2-42.1) may not impair the ability of the authority to deliver
35 and sell SNG to retail end use customers.

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